

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LAMAR HARVEY,

Plaintiff,

- against -

MEMORANDUM & ORDER
21-CV-7031 (PKC) (LB)

DARRIN GERSON, Chief of Service,
in his official capacity,

Defendant.

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PAMELA K. CHEN, United States District Judge:

On December 10, 2021, Plaintiff Lamar Harvey, currently detained at Creedmoor Psychiatric Center (“Creedmoor”) in Queens, New York, filed this *pro se* action against Creedmoor and the Office of Mental Health, an agency of New York State.¹ (Complaint, Dkt. 2.) By Memorandum and Order dated January 4, 2022, the Court granted Plaintiff’s request to proceed *in forma pauperis* and dismissed the Complaint with leave to replead within thirty (30) days. (Dkt. 6.) On February 9, 2022, Plaintiff filed an Amended Complaint against Darrin Gerson, Chief of Service at Creedmoor. (Amended Complaint, Dkt. 9.) On February 17, 2022, the Court dismissed Plaintiff’s Amended Complaint and allowed Plaintiff a final opportunity to amend. (Dkt. 10.)

On March 14, 2022, Plaintiff filed a Second Amended Complaint against Darrin Gerson. (Second Amended Complaint (“SAC”), Dkt. 11.) The SAC includes a copy of the Amended Complaint filed on February 9, 2022, along with a cover letter, a pamphlet for Mental Hygiene Legal Service, and Plaintiff’s request for a law library, which was included in his original

¹ Courts “liberally construe pleadings and briefs submitted by *pro se* litigants, reading such submissions to raise the strongest arguments they suggest.” *McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 156 (2d Cir. 2017).

complaint. (SAC, Dkt. 11, at ECF² 1, 7–11.) In his cover letter, Plaintiff alleges that he “lost out on some personal property that had sentimental value, from a lost love[d] one that was not replaced,” and that he “could not dispute it because we did not have any formal law library or grievance protocol in place.” (*Id.* at ECF 1.)

The Court dismissed the original Complaint because Plaintiff did “not allege how a stolen iPod relates to Plaintiff’s conditions of confinement at Creedmoor,” and thus did not trigger “the state’s affirmative obligation to provide resources (such as a prison law library or legal assistance program).” *Harvey v. Creedmoor Psychiatric Ctr.*, No. 21-CV-7031 (PKC) (LB), 2022 WL 36169, at *2 (E.D.N.Y. Jan. 4, 2022) (quoting *Montanez v. Cuoco*, 361 F. App’x 291, 293 (2d Cir. 2010) (summary order)). The Court dismissed the Amended Complaint because Plaintiff did “not allege that ‘he suffered an actual injury, such that a nonfrivolous legal challenge to his judgment of conviction or conditions of confinement had been frustrated or was being impeded by the actions of prison officials.’” *Harvey v. Gerson*, No. 21-CV-7031 (PKC) (LB), 2022 WL 493180, at *2 (E.D.N.Y. Feb. 17, 2022) (quoting *Rosado v. Maxymillian*, No. 20-CV-3965, 2022 WL 54181, at *1 (2d Cir. Jan. 6, 2022) (summary order)).

The SAC does not contain any additional allegations that would allow Plaintiff’s claim to survive where his previous complaints did not. Although the Court is sympathetic to Plaintiff’s circumstances, it cannot revive his claim that he “lost out on some personal property.” (SAC, Dkt. 11, at ECF 1.) For these reasons, this action must be dismissed. The Clerk of Court is respectfully directed to enter judgment and close this case. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in*

² Citations to “ECF” refer to the pagination generated by the Court’s CM/ECF docketing system and not the document’s internal pagination.

forma pauperis status is denied for the purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

/s/ Pamela K. Chen

Pamela K. Chen

United States District Judge

Dated: March 23, 2022
Brooklyn, New York